



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC-16-0002]

RIN 0563-AC50

Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Basic Provisions. The intended effect of this action is to provide policy changes and to clarify existing policy provisions to better meet the needs of policyholders. Issues have arisen regarding: the qualifications for double cropping; and when it is practical to replant. This rule addresses those issues.

DATES: *Effective date:* This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: The changes are applicable for the 2017 and succeeding crop years for all crops with a contract change date on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and for the 2018 and succeeding crop years for all crops with a contract change date prior to **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comment due date: FCIC will accept written comments on this final rule until close of business **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. FCIC may consider the comments received and may conduct additional

rulemaking based on the comments.

ADDRESSES: FCIC prefers interested persons submit their comments electronically through the Federal eRulemaking Portal. Interested persons may submit comments, identified by Docket ID No. FCIC-16-0002, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

FCIC will post all comments received, including those received by mail, without change to <http://www.regulations.gov>, including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an entity, such as an association, business, labor union, etc.).

Interested persons may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.8 Common Crop Insurance Regulations, Basic Provisions. The changes to the policy made in this rule are applicable for the 2017 and succeeding crop years for all crops with a contract change date on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and for the 2018 and succeeding crop years for all crops with a contract change date prior to **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). However, FCIC is providing a 60-day comment period and invites interested persons to

participate in this rulemaking by submitting written comments. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

The changes to the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) are as follows:

(a) Section 1 – FCIC is revising the definition of “practical to replant.” Concerns have been raised regarding the definition of “practical to replant” and the difficulty and inconsistency that can occur in administering the practical to replant provisions of the crop insurance policy. Approved insurance providers have stated the provisions, as written, regarding “practical to replant” lead to different approved insurance providers reaching differing determinations as to whether it is practical to replant in the same area. FCIC is revising the definition to provide a clear, known deadline for when replanting of the crop is considered to be practical and if not replanted, coverage will not be provided for the initial crop. The definition provides an exception for adverse weather conditions that would either prohibit the physical replanting of the crop, or impact seed germination, emergence, and formation of a healthy plant.

(b) Section 15 – FCIC is revising section 15 to allow the allocation of comingled first and second crop production to the associated crop acreage in proportion to the liability for the acreage that was and was not double cropped. Some producers have found challenges keeping separate records of acreage and production that was and was not double cropped because often times the acreage is in the very same field and they harvest both first and second crop production at the same time. For example, if a producer has two fields in the same unit, or one field half of which was first crop acreage and half that was double crop acreage, next to each other and on one field they plant wheat, harvest the

wheat, and plant soybeans while the other field was a single crop of soybeans only, they may harvest both soybean fields at the same time making it difficult to keep the production separate. This change has previously been implemented administratively through MGR-11-003.

FCIC is also revising section 15 to allow eligible double cropping acres to be based on either, (1) the greatest number of acres double cropped in two of the last four crop years in which the first insured crop was planted; or (2) the percentage of acres historically double cropped in two of the last four crop years in which the first insured crop was planted. Current double cropping requirements do not adequately recognize changes in growing farm operations or for added land. This change will address both land added to an operation, and account for multiple crop rotations. For example, if a producer has a 100-acre farm and has historically double cropped 50 acres planted to wheat followed by soybeans (50 percent of acres historically double cropped), and the producer purchases and plants an additional 200 acres of wheat for a total of 300 acres of planted wheat, the number of acres eligible for double cropping would be based on 50 percent, or 150 acres. If the producer has historically double cropped wheat followed by soybeans on some or even all of the acreage, there is a reasonable presumption they may continue to do so in the future.

Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the rulemaking process. Such action was not required by the Administrative Procedures Act because contracts were exempt from notice and comment rulemaking and the crop insurance policy is a contract. However, a prior Secretary of Agriculture published a notice in the Federal

Register stating that the Department of Agriculture would, to the maximum extent practicable, use the notice and comment rulemaking process when making program changes, including those involving contracts. FCIC has complied with this notice over the subsequent years. Recently, the current Secretary of Agriculture has published a notice in the Federal Register rescinding the prior notice, thereby making contracts again exempt from the notice and comment rulemaking process. This exemption applies to the 30 day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective upon publication in the Federal Register.

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal

mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and

modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 2 CFR part

415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

2. Amend §457.8, in the Common Crop Insurance Policy, as follows:

a. In section 1 by revising the definition of “practical to replant;” and

b. In section 15 by revising paragraphs (h) and (i).

The revisions and additions reads as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. Definitions.

* * * * *

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow it to attain maturity prior to the calendar date for the end of the insurance period. It will be considered practical to replant within or prior to the late planting period, or on or prior to the final planting date if no late planting period is applicable, unless we determine it is physically impossible to replant the acreage or there is no chance of seed germination, emergence, and formation of a healthy plant.

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, if each of the following conditions are met, regardless of whether or not the second crop is insured or sustains an insurable loss:

- (1) Planting two or more crops for harvest in the same crop year in the area is generally recognized by agricultural experts or organic agricultural experts;
- (2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;
- (3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped;
- (4) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, prior to the end of the late planting period for the first insured crop;
- (5) You provide records, acceptable to us, of acreage and production specific to the double cropped acreage proving that:
- (i) You have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted; if you acquired additional acreage, you may apply the percentage of acres that you have previously double cropped to the total acreage now in your operation using the following calculation:
- (A) Determine the number of acres of the first insured crop that were double cropped in each of the years for which records are provided (For example, records are provided showing: 100 acres of wheat planted in 2015 and 50 of those acres were double cropped with soybeans; and 100 acres of wheat planted in 2016 and 70 of those acres were double cropped with soybeans);
- (B) Divide each result of section 15(h)(5)(i)(A) by the number of acres of the first insured crop that were planted in each respective year (In the example above, 50 divided by 100 equals 50 percent of the first insured crop acres were double cropped in 2015 and

70 divided by 100 equals 70 percent were double cropped in 2016);

(C) Add the results of section 15(h)(5)(i)(B) and divide by the number of years the first insured crop was double cropped (In the example above, 50 plus 70 equals 120 divided by 2 equals 60 percent); and

(D) Multiply the result of 15(h)(5)(i)(C) by the number of insured acres of the first insured crop (In the example above, 60 percent of the wheat acres insured in 2017 and 60 percent of the second crop acres insured in 2017 are eligible for double cropping history); or

(ii) The applicable acreage was double cropped (by one or more other producers, and the producer(s) will allow you to use their records) for at least two of the last four crop years in which the first insured crop was grown on it; and

(6) If you do not have records of acreage and production specific to the double cropped acreage, as required in section 15(h)(5), but instead have records that combine production from acreage you double cropped with records of production you did not double crop, we will allocate the first and second crop production to the specific acreage in proportion to the liability for the acreage that was and was not double cropped.

(i) If you provided acceptable records in accordance with section 15(h), your double cropping history is based on the acres historically cropped:

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (e.g., if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long

as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that one or more other producers double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (e.g., if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

* * * * *

Signed in Washington, D.C., on June 16, 2016.

Brandon Willis,
Manager,
Federal Crop Insurance Corporation.

BILLING CODE 3410-08-P

[FR Doc. 2016-14735 Filed: 6/21/2016 8:45 am; Publication Date: 6/22/2016]